IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Asha Parekh. Versus State of Rajasthan & ors.

S.B. Criminal Revision Petition No. 925/2005 against the order dated 30-9-2005 passed by the Additional Sessions Judge, Ratangarh, district Churu, in Sessions Case No. 20/2005.

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Date of Order: June 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mrs. Deepika Vyas, for the petitioner-complainant.
Mr. JPS Chaudhary, Public Prosecutor for the State.
Mr. R.S. Choudhary, for non-petitioners No.2 and 3.

BY THE COURT:

By the instant criminal revision petition under Section 397/401 Cr.P.C., the petitioner-complainant has assailed the order dated 30.9.2005 passed by the Additional Sessions Judge, Ratangarh, district Churu (for short, "the trial Court" hereinafter) in Sessions Case No.20/2005, whereby the application filed by non-petitioners No.2 and 3 under Section 311 of the Code was allowed and the petitioner-complainant, who was already examined as PW 3, was recalled for further cross-examination. Aggrieved by the order impugned, the petitioner-complainant has filed the instant criminal revision.

I have heard learned counsel for the petitioner, the

Public Prosecutor for the State and the counsel for non-petitioners No.2 and 3.

It is contended by the learned counsel for the petitioner that the petitioner appeared as PW 3 and she was subjected to lengthy cross-examination by the non-petitioners No.2 and 3. The non-petitioners No.2 and 3 are facing trial for the offences under Sections 366, 376 (2) IPC., of which the petitioner is a victim of rape. At the fag end of the trial, non-petitioners No.2 and 3 filed an application for recalling the petitioner on the ground that one Jagdish Prasad, the brother of the accused/non-petitioner No.2 Shiv Lal, gave some letters alleged to have been written by the petitioner, which the petitioner had already specifically denied and, therefore, according to the learned counsel for the petitioner, the impugned order recalling the petitioner is erroneous.

Learned Public Prosecutor has not supported the order impugned and submits that in the manner, in which a victim of rape has been recalled to make statement again at the instance of accused amounts to pressurising the victim of rape to succumb to the might of the accused. However, learned counsel for the non-petitioners No.2 and 3 submitted that after recording the statement of PW 3 the prosecutrix and other witnesses, Jagdish Prasad, the brother of accused/non-petitioner No. 2, gave some letters, which according to the learned counsel for

the non-petitioners, were addressed to Jagdish Prasad and written by the petitioner. Learned counsel for the non-petitioners No.2 and 3 has relied on a decision of this Court in Arvind Bhati Vs. State of Rajasthan, 2006 (2) RDD 1253 (Raj.) and a decision of the Hon'ble Supreme Court in Zahira Habibullah Sheikh & ors. Vs. State of Gujarat & ors., (2006) 3 SCC 374.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

From the perusal of the impugned order, it nowhere appears that the alleged letters have been written by the petitioner-complainant and handed over to Jagdish Prasad, the brother of accused Shiv Lal, allegedly stating that she wishes to make statement now in favour of accused/non-petitioners. Almost all the prosecution witnesses have been examined and the matter is at the stage of recording the statement of the accused under Section 313 of the Code and at that time, Jagdish Prasad, who is neither an accused nor a witness in the case, alleged to have come with so-called letter stating that now the prosecutrix wishes to make true statement favour to accused, whereas petitioner, who is a victim of rape, categorically stated that no such letter was given to Jagdish Prasad who is the brother of accused Shiv Lal and the petitoner has specifically denied having written such letter and Jagdish Prasad failed to show as to how and in what circumstances he managed such

letters. Thus, it appears that when the prosecutrix made statement on oath before the trial Court against the accused/non-petitioners, by such design the accused/non-petitioners are pressurising the victim of rape to make statement in favour of the accused, which otherwise cannot be permitted. The decisions relied on by the counsel for the accused/non-petitioners No.2 and 3 turn on their own facts and are of no help to the accused/non-petitioners.

In Zahira Habibullah Sheikh & ors. Vs. State of Gujarat & ors. (supra), the Hon'ble Supreme Court, in para 40 of the reports (SCC) observed as under:-

> " 'Witnesses' as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle the truth and realities from coming out to the surface rendering truth and justice to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if

allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery."

The Apex Court further held as under:-

"The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in the court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. If ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the court mere mock trials as are usually seen in movies.

Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements.

Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the dat. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be

> unfair to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal."

In the instant case, the petitioner-complainant, at no point of time, stated that the earlier statement made by her was not correct and she wishes to make fresh statement. In the circumstances, therefore, the trial Court fell in error in recalling the petitioner-complainant. In this view of the matter, the revision petition deserves to be allowed.

In the result, the revision petition is allowed. The impugned order dated 30-9-2005 passed by the Additional Sessions Judge, Ratangarh, district Churu, in Sessions Case No.20/2005 is set aside. Stay petition stands disposed of.

(H.R. PANWAR), J.

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